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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Numbering Resource Optimization)
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CC Docket No. 99-200 /

AT&T CORP. PETITION FOR RECONSIDERATION

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July 17, 2000

No. of Copies rec'd 049
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SUMMARY

AT&T Corp. respectfully requests that the Commission reconsider its Report and Order and Further Notice of Proposed Rulemaking ("NRO Order") in the above-captioned docket in three respects.

First, the Commission should clarify and revise the order's requirement that a carrier making numbering resources available to a reseller treat those numbers as its own for purposes of reporting and of calculating utilization rates. Well-settled precedent holds that resellers are not the agents of the carriers whose services they resell -- indeed, in many cases resellers compete directly with underlying carriers. There is no valid basis for the order's decision to force one carrier to assume responsibility for reporting -- and, presumably, for the accuracy of any reports -- on behalf of another, unrelated entity. Similarly, when calculating an underlying carrier's utilization rate, it simply blinks reality to treat numbers that have been contractually committed to a reseller's use as available for assignment by the underlying carrier. Such a requirement will provide strong disincentives against both resale and unassigned number porting ("UNP") arrangements. Carriers should be permitted to make their own decisions whether to report on behalf of resellers that do not have OCNs, and numbers allocated to resellers should be omitted from both the numerator and denominator when a carrier calculates its utilization rate.

Second, the NRO Order's ruling that telephone numbers may only be "reserved" for a period of 45 days upsets both carriers' and customers' longstanding plans and expectations, and will have significant negative impacts that were not considered in the order. AT&T respectfully requests that the Commission stay this provision while it considers the order's proposal to permit end users to make some form of payment in order to reserve numbers for

longer than 45 days. Alternatively, the Commission should adopt the NANC NRO Working Group's recommendation for reserved numbers, which would permit reservations for up to twelve months, with one six-month extension.

Third, the NRO Order adopts a five-day limit for holding numbers in “pending” status in the “assigned” reporting category. While AT&T supports the number conservation goals that prompted this requirement, limiting pending orders to only five days is inconsistent with the realities of provisioning systems and processes, as well as with end users' needs and expectations. The Commission should instead establish a 90-day limit for “pending” orders, and should permit extensions based upon a showing that a specific project is particularly large or complex, or that delays were caused by factors beyond a carrier's control.

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CC Docket No. 99-200

AT&T CORP. PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") hereby respectfully requests that the Commission reconsider its Report and Order and Further Notice of Proposed Rulemaking ("NRO Order")¹ in the above-captioned docket in three respects. The Commission should (1) clarify and revise the order's requirement that a carrier making numbering resources available to a reseller treat those numbers as its own for purposes of reporting and of calculating utilization rates; (2) stay or revise the 45-day limit for number reservations; and (3) reconsider the 5-day limit on "pending" orders and instead establish a 90-day limit, and should permit extensions based upon a showing that a project is particularly large or complex, or that delays were caused by factors beyond a carrier's control.

I. Resellers' Numbers Should Not Be Attributed To The Underlying Carrier For Purposes Of Reporting Or Calculating Utilization

The NRO Order establishes the classification "intermediate numbers" to cover those numbers (§ 21) "made available for use by another carrier or non-carrier entity for the

¹ Report and Order and Further Notice of Proposed Rulemaking, Numbering Resource Optimization, CC Docket No. 99-200, FCC 99-122 (released June 2, 1999) ("NRO Order").

purpose of providing telecommunications service to an end user or customer,” including

“numbers provided for use by resellers.” The order provides that (*id.*)

the carrier making such numbers available for assignment by a non-carrier entity should categorize them as *intermediate numbers* only until they are assigned to an end user or customer by the non-carrier entity. Once *intermediate numbers* are assigned to an end user or customer [by] the non-carrier entity, the carrier making such numbers available to the non-carrier entity should categorize them as *assigned numbers*.

Two aspects of the Commission’s definition and treatment of intermediate numbers are relevant to the instant petition. First, the NRO Order requires (§ 40) carriers receiving intermediate numbers to report forecast and utilization data “to the same extent required for code and block holders.” For non-carriers, however -- that is, entities without an OCN² -- the underlying carrier that provides the numbers in question is responsible for reporting on the non-carriers’ behalf.

Second, the order establishes a formula for calculating a carrier’s utilization rate that treats intermediate numbers not yet assigned to end users -- including numbers that have been contractually committed to a reseller’s use -- as if they are available for assignment by the underlying carrier to its own end user customers. “[T]he utilization level in a given geographic area (NPA or rate center) should be calculated by dividing all *assigned numbers* (numerator) by total numbering resources assigned to that carrier in the appropriate geographic region (denominator), and multiplying the result by 100.” (§ 109). Because, as explained above,

² Although the NRO Order does not expressly define “carrier” or “non-carrier,” those categories appear to turn on whether an entity has been assigned an OCN. Because all “carriers” must associate an OCN with their reports, presumably those entities without OCNs cannot possess “carrier” status. See NRO Order § 40-41; Public Notice, Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding, CC Docket No. 99-200, DA 00-1549 (released July 11, 2000), p. 2 (“All carriers required to report utilization and forecast data must have an OCN.”).

intermediate numbers are not deemed “assigned” until they are assigned by a reseller or other entity to a specific end user, the NRO Order’s utilization formula presumes that an underlying carrier can itself assign to its own customers all intermediate numbers in its inventory.

AT&T supports the Commission’s treatment of intermediate numbers that are assigned to or controlled by entities that act as agents or representatives of the underlying carrier. For example, numbers assigned to dealer pools by a wireless carrier are in fact dedicated to that carrier’s use and presumably are controlled by that carrier. However, carriers should have the option to treat numbers assigned to resellers differently. The Commission repeatedly has held that resellers are the customers of the carriers whose services they buy (and often their direct competitors as well), not their representatives or agents. “[R]esellers are both customers and competitors of facilities-based IXCs and are not sales agents or affiliates of the facilities-based IXC.”³ Moreover, these longstanding precedents are in no way dependent on whether a reseller possesses an OCN. Many switchless resellers do not have OCNs. These entities are nevertheless subject to the Commission’s Title II jurisdiction, and must be regarded as “carriers” under any reasonable construction of that term.

Because resellers are not agents or representatives of the carriers whose services they resell, it is patently unreasonable to require an underlying carrier to file numbering reports on a reseller’s behalf. This is particularly true to the extent that the Commission or a state commission might seek to hold an underlying carrier responsible for the accuracy of the figures attributable to a reseller’s activities. Indeed, an underlying carrier has no means to compel a

³ In re WATS International Corp. v. Group Long Distances (USA), Inc. et al., 12 FCC Rcd 1743, n.5, 1752 ¶ 19 (1997), citing generally Regulatory Policies Concerning Resale and Shared Use of Common Carrier Service and Facilities, 60 F.C.C.2d 261 (1976).

reseller to provide it with utilization data at all; and many resellers may be reluctant to share with a direct competitor sensitive information such as the number of customers they have obtained in each rate center of an NPA. A reseller and an underlying carrier should be permitted to agree voluntarily to jointly report numbering information, but the NRO Order does not -- and cannot -- offer a reasoned basis to compel an underlying carrier to assume responsibility for an unrelated entity in such a fashion.

AT&T urges the Commission to amend the NRO Order to provide that underlying carrier need only indicate in its semiannual reports that it has assigned a specified block of numbers for use by a particular reseller. That reseller should then -- without regard to whether it possesses its own OCN -- be required to assume full responsibility for meeting the order's reporting requirements for the numbers assigned to it, either by filing its own reports or by entering into an arrangement with the underlying carrier to report on its behalf.⁴

The Commission should also reconsider the NRO Order utilization formula's treatment of numbers assigned to resellers. As described above, in calculating its utilization rate, a carrier must treat numbers assigned to resellers but not yet assigned by those entities to end users as if they were available for assignment by the underlying carrier. This is so even when the underlying carrier has a contractual commitment to make a particular number block available exclusively for a reseller's use. This means, for example, that if a carrier allots three thousands blocks in an NXX to a reseller but that reseller is able to sell service to only one hundred end

⁴ If the Commission declines to grant the relief AT&T requests, it should, at a bare minimum, clarify that an underlying carrier is in no way responsible for the accuracy of the figures it is compelled to report for a reseller. Any potential liability for reporting inaccuracies or improprieties should remain with the reseller, as it is the only entity that

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users, the underlying carrier cannot achieve a utilization rate of more than 71% even if it assigns all other numbers in that NXX. Plainly, forcing an underlying carrier to bear the risk that it will be unable to obtain “growth” numbering resources in the event its reseller does not succeed is antithetical to the well-settled conclusion that resellers are independent actors, not agents of their underlying carriers. Such a policy will, moreover, strongly discourage resale, contrary to the Commission’s longstanding policy of enabling that form of competition.

A similar problem could arise under unassigned number porting (“UNP”) arrangements. Typically, carriers entering into a UNP arrangement do not port numbers one at a time, but rather in substantial blocks. Assuming that blocks that are ported for this reason are treated as intermediate numbers,⁵ then the carrier that made such numbers available for porting would find its own utilization figures artificially depressed if the ported-to carrier were unable to acquire customers at the expected rate. Although the NRO Order correctly ruled (§ 230) that UNP is currently too undeveloped to be made mandatory, the Commission has recognized that UNP is an “innovative” approach and that carriers should be “encourage[d]” to pursue it voluntarily.⁶ Contrary to this holding, the NRO Order’s requirement that carriers include in their

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possesses the full information necessary to comply with the NRO Order’s reporting provisions.

⁵ Numbers ported to another carrier as part of a UNP arrangement could potentially be treated as “assigned” numbers, but that would appear to be inconsistent with the NRO Order’s requirement (§§ 16-17) that such numbers be working in the PSTN for the use of a specific customer.

⁶ E.g., Order, New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-21, (released September 15, 1999) § 38.

utilization calculations numbers ported to another carrier as part of a UNP arrangement will provide a serious disincentive to unassigned number porting.

The Commission can -- and should -- avoid the anomalous and unreasonable treatment of resale and UNP in the NRO Order's utilization calculation by permitting a carrier to omit from both the numerator and denominator of that formula any intermediate numbers that have been either: (i) assigned to an entity that is neither an affiliate, agent or representative of that carrier, for that entity's exclusive use in providing services to its customers (whether or not that entity has its own OCN); or (ii) ported to another carrier as part of a UNP arrangement.⁷ The entity that actually has the ability to assign such numbers to end users should then report its own utilization of those numbers, using the NRO Order's criteria.⁸

II. The Commission Should Revise The Order's 45-Day Limit On Number Reservations

The NRO Order (§§ 23-24) permits carriers to treat numbers as "reserved" for a specific end user for no more than 45 days, with no extensions. A wide range of end users and carriers already have demonstrated in petitions, comments, and letters to the Commission that this drastic change in policy will have a severe negative impact on end users and carriers alike.⁹

⁷ When a number formerly ported for UNP purposes "snaps back" to the underlying carrier or otherwise becomes available again for that carrier's use, then it should be treated like any other number in the underlying carrier's inventory.

⁸ The pleadings filed in response to the FNPRM included in the NRO Order demonstrate broad agreement that the Commission should reconsider the treatment of numbers assigned to resellers in that order's utilization formula. See, e.g., ALTS Comments, pp. 3-4; Bell Atlantic Comments, p. 7; BellSouth Reply Comments, p. 8; Maine Commission Reply Comments, p. 2; SBC Comments, p. 8; Sprint Comments, p. 6; Time Warner Comments, p. 4; Verizon Wireless Comments, p. 20.

⁹ See, e.g., BellSouth Corporation Emergency Petition for Partial Stay (July 10, 2000) (collecting quotations from end users' letters to the Commission); Qwest Corporation

(footnote continued on next page)

To take just two examples, The Florida State Technology Office, the entity responsible for procuring telecommunications services for Florida's state government, explained that it

relies heavily on being able to maintain a number block concept for the simplification and efficiency of our consolidated support systems. Processes such as billing, inventory, trouble reporting and resolution, stand to be negatively affected if numbers are no longer reserved for the state for assignment within a logical sequence....¹⁰

The State of Illinois Department of Central Management Services, which manages telecommunications services for Illinois state government, stated that limiting reservations to 45 days would "seriously diminish[]" its "ability to deliver services in a timely manner," because "[l]arge projects with hundreds of phones will always take more than the 45 days allowed under" the order.¹¹ Its comments went on to predict that the 45-day limit also will result in "an incalculable increase in [the State's] cost of doing business."¹²

AT&T strongly supports the comments of these and other parties who have argued that the 45-day limit does not adequately take into account either the needs of large end users or the realities of the provisioning process. Moreover, nothing in the record of this docket supports the claim that number reservations have in fact been a significant driver of NPA

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Request For Expedited Deferral Of Effective Date Or, Alternatively, A Waiver Or Stay Of Portions Of Soon-To-Be-Effective Rule 47 C.F.R. Section 52.15(f) (July 10, 2000) (collecting quotations from end users' letters to the Commission).

¹⁰ Comments of Florida State Technology Office (June 30, 2000), pp. 1-2.

¹¹ Comments of State Of Illinois, Department of Central Management Services in CC Docket No. 99-200 (undated) (emphasis added).

¹² Id.

exhaust. The NRO Order merely finds that permitting longer reservations could lead to abuses,¹³ and concludes -- without record support and without offering reasons -- that (§ 23) “limiting reservations to 45 days reasonably balances the needs of carriers to earmark and set aside a number or group of numbers for a particular customer against the objective of improving the efficiency of numbering resource use.” This unsupported assertion fails to provide adequate grounds on which to rest the order’s 45-day limit.

AT&T respectfully requests that the Commission stay the 45-day limit on reservations until it acts on the NANC recommendation it sought in paragraph 25 of the NRO Order “whether to permit end users to make some form of payment in order to reserve numbers for longer than 45 days.” As SBC and Sprint demonstrated in recent pleadings filed in this docket, in the absence of such a stay, end users that currently have reservations in place would lose them as of September 1, 2000 and likely would be unable to reserve the same numbers if the Commission later adopts a “pay to reserve” system.¹⁴ A stay therefore would maintain the status quo and prevent irreparable harm to telecommunications customers. Alternatively, the Commission should revise the NRO Order by adopting the NANC NRO Working Group’s recommendation for reserved numbers (§ 22), which would permit reservations for up to twelve months, with one six-month extension.

¹³ See NRO Order § 23 (“[W]e conclude that permitting carriers to hold numbers in reserved status for a long period of time invites abuse.”).

¹⁴ See SBC, Emergency Petition for Partial Stay (July 7, 2000); Sprint Comments In Support Of Emergency Petition For Partial Stay (July 10, 2000).

III. The Commission Should Revise The 5-Day Limit On “Pending” Orders

AT&T also urges the Commission to revise the NRO Order’s (§ 19) “five-day limit on the time that a number may be held in pending status in the *assigned* category.” This requirement seeks (*id.*) “to prevent carriers from classifying numbers as pending assignment when those numbers should more accurately be placed in the category of *reserved numbers*.” The order, however, fails to provide any support for the 5-day limit it adopts. The Commission noted only that no party “adequately justified why a number should be held as pending assignment for an unlimited amount of time,” and leapt from that perfunctory observation to the conclusion that “five days should be adequate to complete activation in most instances.” (*id.*, emphasis added).

Contrary to the order’s suggestion, five days is simply not a realistic window for the provisioning of large or complex orders, or for ILECs to provision unbundled network elements ordered by CLECs,¹⁵ and nothing in the record supports a contrary conclusion. Even if five-day completion of all pending orders were eventually achievable (a point that is, at best, highly debatable), neither carriers’ nor end users’ systems and processes could be sufficiently reworked during the brief period between the NRO Order’s March 31, 2000 release and its July 17, 2000 effective date.

AT&T respectfully requests that the Commission establish a 90-day limit for “pending” orders, and that it permit a carrier to extend that period based upon a showing that a specific project is particularly large or complex, or that delays were caused by factors beyond

¹⁵ See, e.g., Comments of State Of Illinois, Department of Central Management Services (“the five day rule will routinely cause a change of number during [the] installation cycle”).

carrier's control. To continue the current 5-day standard would, in effect, penalize large end users, or those that experience delays due to construction or other problems, by forcing them to notify their customers and suppliers and perform myriad other tasks necessitated by changing telephone numbers in the midst of a large project. In the alternative, AT&T requests that the Commission stay the effectiveness of the five-day limit on pending orders until it can compile a record on the question of what interval or intervals would be reasonable. Given that one of the chief aims of the NRO Order is (§ 1) to reduce "expense and inconvenience" for telecommunications customers, it would be irrational and arbitrary to require that orders may be accorded "pending" status for no more than five days.

CONCLUSION

AT&T respectfully urges the Commission to reconsider or clarify the NRO Order in accord with the above comments.

Respectfully submitted,

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